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Case No. 87-570

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

NICHOLAS COLAFELLA, K. LEROY IRVIS, JAMES J. MANDERINO, MATTHEW J. RYAN, AND THE BI-PARTISAN COMMITTEE FOR THE ADMINISTRATION OF THE HOUSE OF REPRESENTATIVES,

v. Petitioners,

THE UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF THE MICHIGAN LEGISLATIVE COUNCIL AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
IDENTITY OF THE AMICUS	2
INTEREST OF THE AMICUS	3
ARGUMENT	7
CONCLUSION	8

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

	Page
Mich. Const., art. IV, §11	2

CASES

United States v. Gillock, 445 U.S. 360 (1980)	3

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IDENTITY OF THE AMICUS

The Amicus is the Michigan Legislative Council, a bipartisan committee of the Michigan Legislature comprised of members of the Michigan Senate and the Michigan House of Representatives. The members of the Amicus are duly elected and empowered by the people of the State of Michigan pursuant to the Michigan State Constitution of 1963 to legislate for the public good.

INTEREST OF THE AMICUS

In the performance of their important constitutional task, it is of the utmost necessity that the Michigan Legislature and its constituent committees, such as the Amicus, receive enlightened debate on all issues of concern to the people of the State of Michigan. In order to ensure that the debate on such issues is of maximum aid to the members of the Amicus and the other Michigan legislators, the Michigan Legislature, its constituent committees, and its members must be free to perform their legislative functions independently and without fear of outside interference. To clearly demonstrate the will of the people of the State of Michigan that their legislators should have that freedom from interference, they adopted a specific provision in the Michigan State Constitution of 1963 on this issue, which provides that members of the Michigan Legislature "shall not be questioned in any other place for any speech in either house.". (Mich. Const. 1963, art. IV, §11)

To ensure truly informed decisions and comprehensive deliberations on issues of State concern, the Michigan Legislature and its constituent legislative committees often formally and informally conduct investigations of matters

involving the operation of State government or the expenditure of State funds, similar to the investigations of the Pennsylvania petitioners. For those investigations to be effective, the Michigan Legislature and its constituent committees require an independence of action that frees them from the influence, harassment, and threat of disruption from the executive and judicial branches of both State and Federal governments and would be reluctant to comply with subpoenas of legislators and legislative staff seeking to uncover legislative records. Such reluctance to disclose confidential information is especially appropriate when, as in nearly all cases of legislative investigation, no legislator is under investigation, unlike the situation in United States v. Gillock, 445 U.S. 360 (1980).

Because the investigative power of the Michigan Legislature and its constituent committees, such as the Amicus, is often critical to the performance of their legislative functions, it is of paramount importance that the Michigan Legislature and their constituent committees be given an assurance that their future investigations will not be subject to the interference of Federal officials.

In the instances in which the Michigan Legislature or a constituent committee would challenge subpoenas of legislators, legislative staff, and legislative records, even the efforts to move to quash the subpoenas would distract legislators from the performance of their constitutional functions and require expenditures of money and human resources.

If the decision of the Third Circuit remains viable, any United States Attorney would have the ability to subpoena the records of the Amicus or any other constituent committee of the Michigan Legislature and force any or all of their members to appear before a Federal Grand Jury on any relevant issue. In fact, the Third Circuit decision appears to allow the United States Attorney to send subpoenas seeking updates on the legislative investigations on a monthly, weekly, or even daily basis. Any subpoena would certainly interfere with legislative investigative activity, but the possibility of required compliance with frequent subpoenas of legislative records has the potential for even more dangerously disrupting ongoing legislative fact-finding.

The Amicus feels the Third Circuit decision was erroneously decided. Given the grave import of that decision on present and anticipated future activities of the Amicus, its members, and the Michigan Legislature as a whole, the Amicus submits this brief to urge this Court to resolve this issue in a manner that will ensure the independence necessary to the Amicus to perform its constitutional duties.[1]

[1] Pursuant to Rule 36 of the Rules of the Court, the parties have consented to the filing of this brief. Their letters of consent have been filed with the Clerk of the Court.

ARGUMENT

The issue of legislative independence from the interference of the executive and judicial branches of State and Federal government is of critical importance to the Amicus, as it is to all State Legislatures and State legislative committees given responsibilities similar to that of the Amicus.

It is that commonality of interest that convinces the Amicus that the arguments against the continued viability of the decision of the Third Circuit as set forth by the Pennsylvania petitioners may also serve as the arguments of the Amicus. Those arguments are hereby incorporated, by reference from the document entitled "Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit" submitted to this Court on October 2, 1987, by the Petitioners, Nicholas Colafella, K. Leroy Irvis, James J. Manderino, Matthew J. Ryan, and the Bi-partisan Committee for the Administration of the House of Representatives, as the arguments of the Amicus.

CONCLUSION

For the foregoing reasons and those incorporated from the Pennsylvania petitioners' petition, the Amicus respectfully requests the writ of certiorari be granted.

Respectfully submitted,

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